IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 2653 OF 2005**

Chandrakant Baburao Katake.. ... Petitioner.

Versus

Narayan Baburao Katake. ... ... Respondent.

Mr. Pratap Patil for the Petitioner.

None for the Respondents.

**CORAM : S. A. BOBDE, J.**

**DATED : 13TH JUNE, 2005.**

**P.C.:**

This petition is directed against the order dated 29th January, 2005 passed by the 11th Joint Civil Judge, Senior Division, Pune, by which the trial Court has framed an additional issue on the basis of the Defendant's objection that the suit is not tenable.

2. The Defendant then had applied for framing an additional issue as to whether the suit is tenable under Order 37 Rule 2(b) of the Code of Civil Procedure. The trial Court has accordingly framed the issue. The learned Counsel for the Petitioner/Defendant submits that the burden ought not

to have been placed on the Petitioner/Defendant. I see no merit in this contention. If it is the Petitioner's case that the suit is not tenable, he must prove it. No cause is shown to interfere with the order impugned. The writ petition is, accordingly, dismissed.

Sd/-

**(S. A. BOBDE, J.)**